Proceedings of the Government of His Highness the Maharaja of Mysore, Petition, dated 14th April 1904.

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 64 of 1903-04.

Appellant	*Versus*	*Respondent*
Venkataramanappa		Tippareddi

Subject.

Appeal against the order of the Deputy Commissioner, Kolar District, cancelling the sale to the appellant of a part of Survey No. 51 of the Agrahar village in the Srinivaspur Taluk.

The facts of the case will appear from the following:—

Decision.

This appeal relates to a piece of assessed waste land which was applied for by the appellant and duly sold to him in October 1900. On a representation made by the father of the respondent, who is the occupant of the adjoining land, the Amildar cancelled the first sale and ordered a second. Government are not satisfied that there was any justification for the action thus taken by the Amildar. However that may be, the appellant himself purchased the land at the second sale. That sale was confirmed and the land put in the appellant's possession. The appellant has since been enjoying the land by right of purchase. At the instance of the respondent, the Assistant Commissioner set aside the second sale and ordered a third, on the ground chiefly that there were certain erasures in the Haraj Isthihar. Government are clearly of opinion that the Assistant Commissioner's order is unsustainable. There is nothing to show that the erasures were other than *bona fide* ones made in the usual course and that they are indicative of the existence of any fraud or irregularity in connection with the sale. During the pendency of the proceedings, the Deputy Commissioner conditionally confirmed the second sale, but on receipt of a report from the Assistant Commissioner ordered a fresh one. Thus after the cancellment of the first sale by the Amildar and of the second by the Assistant Commissioner, there were two sales, one under the orders of the Assistant Commissioner and the other under those of the Deputy Commissioner and at both of these the respondent became the purchaser. Government are constrained to record their disapproval of the action taken by the Assistant Commissioner and the Deputy Commissioner in interfering with, and setting aside, a sale which was held in a formal manner and which was obnoxious to no valid objection. As a matter of fact, the appellant admittedly continues to be in possession, while the respondent claiming under the third or rather fourth sale which ought not to have been held, seeks to oust him. The respondent's contention is wholly untenable. In reversal, therefore, of the Deputy Commissioner's order appealed from, Government direct that the second sale under which the appellant holds the land be regarded as a final disposal of the land and that accordingly the appellant be left in undisturbed possession. The money paid by the respondent will be refunded to him.

No. 1271—P. F. 142-03, DATED BANGALORE, 14TH APRIL 1904.

Copy of the above is forwarded to the Deputy Commissioner, Kolar District, together with the records received with his letter No C. 529, dated 12th October 1903.

Proceedings of the Government of His Highness the Maharaja of Mysore, Petition, dated 7th April 1904.

Appeal No. 67 of 1903-04.

Appellants	*Versus*	*Respondent*
1. Tirunarniengar		Doddanaika
2. Krishniengar		

Subject.

Appeal against the order of the Deputy Commissioner, Hassan District, confirming the sale for arrears of revenue of lands Survey Nos. 31 and 32 of Malagondanahalli, Hassan Taluk.

Facts of the case.

The assessment due for the year 1899-00 and amounting to Rs. 22-13-6 on the lands above referred to (measuring in all 16 acres and 8 guntas and assessed at Rs. 21-8-0), in the khate of one Gopalachar, brother of the appellants, having fallen into arrear, the lands were, after the usual preliminaries, advertised for sale on the 19th October 1900. The shekdar having reported that he could not hold the sale on the said date, a second sale was ordered by the Amildar. About that time, however, one Hussein Sabi petitioned the Amildar stating that the sale did take place on the 19th October 1900, that he was the highest bidder thereat for Rs. 27-8-0 and deposited Rs. 7 and that he remitted the balance by a money order. Petitions were also received from the mother of the khatedar, the appellants (brothers of the khatedar) and from one Tirunarniengar of Haragu, an alleged mortgagee of the land, offering to pay up the arrears. Hussein Sab's allegation not having been proved and the arrears continuing to be unpaid, the 2nd sale for the arrears of 1899-00 and 1900-01, amounting to Rs. 48 was held on the 28th October 1901 and as there were no bids, the lands were, under the orders of the Deputy Commissioner, bought in by Government, that is, resumed to Government in July 1902 and subsequently on the receipt of a darkhast disposed of by public auction as unoccupied Government lands, the respondent purchasing them for Rs. 300. The sale was confirmed by the Assistant Commissioner in charge of the Taluk on the 3rd February 1903 and the Deputy Commissioner

Decision.

The appellants are the younger brothers of khatedar Gopalachar. For the arrear due on the lands in question, the usual forfeiture and sale were ordered. It is alleged that a sale was held on the 19th October 1900 and that one Hussein Sabi became the purchaser. The shekdar denies having held any such sale. The evidence in proof of the sale is meagre and unsatisfactory. The Amildar and the Deputy Commissioner concurred in disbelieving the story. The lands were really brought to sale in October 1901 as the arrear still remained unpaid. For want of bidders, the lands were resumed by Government. In other words, the Government bought them in. Subsequently, *i.e.*, in November 1902, a darkhast was received. After the observance of the usual formalities, the lands were sold as unoccupied or Government waste with the result that the respondent became the purchaser for Rs. 300. This sale was confirmed and the lands put in respondent's possession. There is no allegation that there was any irregularity in connection with this sale. All that the appellants contend is that the sale for arrears was either a myth or was tainted with fraud. This has not been established. The appellants assert that they offered to pay up the arrear, but that the local authorities declined to accept the payment. There is nothing on record in support of this assertion. There have been two sales, one for arrears and the other on a darkhast. Government are of opinion that there are no grounds for interference, neither of the sales being open to any valid objection. The appeal fails and is accordingly rejected.

No. 1236—P. F. 136-03, DATED BANGALORE, 7TH APRIL 1904.

Copy of the above is forwarded to the Deputy Commissioner, Hassan District, together with the records received with his letter No. 205, dated 17th October 1903.

Proceedings of the Government of His Highness the Maharaja of Mysore, Petition, dated 20th April 1904.

Appeal No. 63 of 1903-04.

Appellant—Chennabasava Vader, Agent of Devanhalli Mahantana Matt.

Subject.

Claim to hold the Chikkabanahalli village in the Devanhalli Taluk, as Devadaya Inam free of the quit-rent imposed at the Inam Settlement.

Facts of the Case.

It appears, from the Inam Register of enquiry, that the village which was personal Inam before 1799, was resumed in that year, that it was restored in 1811 by His Highness the Maharaja to Mahanta Vader who alienated it to the Matt and that the village was confirmed by the Inam Superintendent in 1875 to the Matt on $\frac{1}{8}$th quit-rent.

2. The appellant who is the Agent of the Matt petitioned the Inam Superintendent in May 1903, complaining of the levy of quit-rent as the Inam was Devadaya and praying for either the cancellation of the quit-rent or for enfranchisement of the Inam. The Inam Superintendent in his endorsement dated the 28th May 1903, declined to interfere and referred the appellant to the proper authority. Hence the present appeal to Government.

3. The Inam Superintendent in his docket No. 59, dated the 30th October 1903, reports that the grounds on which the Inam Superintendent charged $\frac{1}{8}$ quit-rent are not clear, that it has not been specifically noted that the village has been enfranchised but it is left to be presumed that it was and that the proper treatment should have been to confirm the Inam under Rule V as Devadaya on the former jodi of Rs. 29-1-0 avoiding fractions.

Decision.

Government agree with the Inam Superintendent, that this Inam should have been settled under Rule V of the Inam Rules. He will now be requested to revise the settlement accordingly.

No. 1314—P. F. 151-03, DATED BANGALORE, 20TH APRIL 1904.

Copy of the above is forwarded to the Superintendent of the Inam Settlements in Mysore, for information and guidance, together with the original Inam Register received with his docket dated the 30th October 1903.

Proceedings of the Government of His Highness the Maharaja of Mysore, Petition, dated 20th April 1904.

Appeal No. 82 of 1903-04.

Appellant.	*Versus*	*Respondents.*
Subbaraya, son of shanbhog Krishnappa, Guddetcta, Koppa Taluk.		1. Shanbhog Krishnappa. 2. Patel Dyavaiya. 3. Malera Rama. 4. Channagiri Sinappa.

Subject.

Appeal against the order of the Deputy Commissioner, Kadur District, cancelling the sale held for arrears of revenue of Survey Nos. 37, 38 & 86 of Attikodige village, Koppa Taluk, and directing the forfeiture of the deposit amount paid by the appellant.

The facts of the case appear sufficiently from the following:—

Decision.

The 2nd respondent (patel) is the Khatedar of certain lands 8 in number. He became a defaulter in respect thereof to the extent of Rs. 225-3-2. Three of the eight lands, namely,

Nos. 37, 38 & 86, were declared forfeited and ordered to be sold, the proposal in that behalf emanating as usual from the shanbhog who happens to be the 1st respondent. The date fixed for sale was 22nd September 1902. Long before that date, *i. e.*, on 14th June 1902, the 4th respondent's father Rangappaiya since deceased, sent up a petition to the Amildar of the Koppa Taluk in which the said lands are situate, asking for some information as to the amount of outstandings due, etc. This individual was a resident of Birur of the Kadur Taluk. He alleged that he had an interest in garden land No. 38 and in two other wet lands in that he was a transferee of a mortgage made by the 3rd respondent Rama, who had purchased the lands from the 1st respondent to whom they had some time previously been conveyed by the Khatedar (2nd respondent). After some delay which cannot be considered satisfactory, the Amildar obtained the necessary information from the shanbhog (1st respondent) through the shekdar and sent the same to the Amildar of the Kadur Taluk on 28th August 1902 for communication to the father of the 4th respondent. In the latter taluk again there was considerable delay, and the result was that during the pendency of the correspondence and before the 4th respondent's father was even communicated with, the 3 numbers mentioned above were sold on the date appointed, *viz.*, 22nd September 1902. The appellant, who is a son of the shanbhog (1st respondent), purchased them for Rs. 983. He paid a deposit of Rs. 250 then and there and Rs. 730 within 15 days from the date of the sale. The 4th respondent's father objected to the confirmation of the sale on the ground *inter alia* that it was a fraudulent transaction brought about by the patel and shanbhog even before the particulars of the demand had been furnished to him as applied for. An enquiry followed with the result that on the Amildar's recommendation, the Assistant Commissioner in charge of the Taluk (Mr D'Souza) set aside the sale and directed the forfeiture of the deposit. The Deputy Commissioner Mr. M. Narain Rao, on appeal, affirmed the Assistant Commissioner's order. Hence the present second appeal.

2. The points for determination are (1) whether the sale was rightly cancelled as tainted with fraud, and (2) whether the deposit was rightly ordered to be forfeited on the ground that a small portion of the purchase money, *viz.*, Rs. 3, was paid some time after the expiration of the prescribed period.

3. As to point (1) Government are clearly of opinion that the authorities below have taken an erroneous view of the case and that there were no sufficient grounds for the cancellation of the sale. It is certainly not denied that the appellant is a young man yet in his teens, who lives with his father the shanbhog with whom his interests are identical, and that if there was any fraud on the part of the shanbhog, the appellant must be supposed to have been privy to it. But the question is, was there any fraud at all? The answer to this must be in the negative.

4. There certainly was no need for the shanbhog suggesting that all the 8 numbers be forfeited and sold. He proposed that action be taken against No. 38 in which the 3rd respondent alone was interested, No. 37 in which both 2nd and 3rd respondents were alike interested, each being the owner of a portion of it, and No. 86 which continued to be the property of the 2nd respondent, not having been included in the sale to the 1st respondent and re-sale to the 3rd respondent. If these 3 numbers were sufficint to enable Government to realise the full amount of arrear due, as the result of the sale subsequently showed they were, the shanbhog's suggestion was perfectly justifiable and could not be regarded as other than *bona fide*. The several officers who dealt with the case were clearly under a misapprehension when they assumed that none of the lands in which the patel had an interest was proposed to be proceeded against and that in collusion with him, the shanbhog moved for the sale of the lands of the 3rd respondent alone. Another mistake they made was that the 4th respondent as the assignee of a mortgage was interested in all the 3 numbers in question, while as a matter of fact he had an interest only in one of them wholly, in another in part and none at all in the third No. 86, his interest as well as that of the 3rd respondent being in No. 87 which was not forfeited or sold.

5. Surely the 4th respondent was not entitled to any notice from the shanbhog and patel and these latter are not in any way responsible either for the delay in giving him the information asked for or for the sale having been held in spite of the pendency of his application. The Taluk authorities are wholly to blame in the matter.

6. It cannot seriously be contended that by reason of his relationship to the shanbhog, the appellant was debarred from making the purchase in question and that the fact of his having nevertheless done so, is proof of the absence of good faith in himself and his father and the patel.

7. There is nothing to show that the price realised at the sale was much below the market value of the lands. On the contrary the amounts of the private sales of the bulk of this property, first to the 1st respondent and then to the 3rd respondent, show beyond all reasonable doubt that the result of the haraz (auction) could not have been more satisfactory.

8. The 4th respondent's father had no *locus standi*. If he wished to prevent the sale of which he was evidently not unaware, he should have paid up the arrear instead of merely contenting himself with seeking an enquiry. That the sale has operated prejudicially to him is no reason why any fraud should be suspected to have been perpetrated in connection therewith. That his mortgagor and tenant did not behave fairly and honestly towards him is an allegation which, even if true, cannot warrant the revenue sale being impugned as a fraudulent proceeding.

9. That any undue advantage was taken by the shanbhog and patel of the fact of the 4th respondent's father being an absentee proprietor or rather assignee of a mortgage, has not

been established by any evidence, oral or documentary. Nor is there anything in the probabilities of the case to support the contention.

10. For the above reasons Government have, after giving the case their best consideration, arrived at the conclusion that the revenue sale was not a transaction vitiated in any way by fraud.

11. This finding on point No. 1 renders a decision on point No. 2 unnecessary. Government may, however, observe that there was in this case no default of the kind contemplated by law and that the non-payment in due time of the paltry sum of Rs. 3 out of the large sum of Rs. 983 was purely due to an oversight for which the Taluk authorities were chiefly responsible, inasmuch as in the first receipt given by the Sheristadar for Rs. 250, the full amount of the purchase money was expressly stated to be Rs. 980 and the 2nd given by the Amildar perpetuated the mistake by purporting to be an acknowledgment for the full amount due.

12. The Deputy Commissioner's order rests upon what appear to be hypothetical grounds and in consequence unsustainable. Government accordingly allow the appeal and in reversal of the Deputy Commissioner's order direct that the revenue sale be confirmed and given effect to.

No. 1315—P. F. 152-03, DATED BANGALORE, 20TH APRIL 1904.

Copy of the above is forwarded to the Deputy Commissioner, Kadur District, together with the records received with his letter No. 355, dated 13th January 1904.

Proceedings of the Government of His Highness the Maharaja of Mysore,

Petition, dated 4th May 1904.

Appeal No. 53 of 1903-04.

Appellant. — Chikka, minor by mother and guardian Mari Venkatamma.

Versus.

Respondent. — Chikka, minor by mother and guardian Chikkahutchamma.

Subject.

Appeal against the order of the Deputy Commissioner of the Bangalore District, directing the registry of the pateli office in question in the name of the respondent.

Facts of the Case.

On the death in February 1898 of the appellant's father Sudgadey Gauda, patel of Santemogenahalli, the Assistant Commissioner in charge of the Taluk directed the registry of the office in the name of appellant and referred Chikke Gauda, father of the respondent, who also claimed the office, to a regular suit. In the suit brought by the respondent, the Assistant Commissioner decided that the respondent was also a hakdar and was entitled to hold the office in rotation with the appellant for a period of two years. On appeal the Deputy Commissioner (Mr. B. K. Venkatavaradiengar) cancelled on 30th January 1901, the portion of the decree relating to the performance of duties by rotation and confirmed the rest of the decree. On the death of Chikke Gauda, the Deputy Commissioner (Mr. Sparkes) directed on 21st October 1902, the registry of the pateli office in the name of the respondent and referred the appellant, who asserted that the respondent was not the legitimate son of Chikke Gauda, to a regular civil suit. Hence the appeal.

Decision.

The first Court (*i. e.*,) the Assistant Commissioner) declared both the plaintiff and defendant to be hakdars to the office in question and directed that they should officiate by rotation of two years each. The defendant (appellant) was not satisfied with that decree and accordingly preferred an appeal to the Deputy Commissioner (Mr. B. K. Venkatavaradiengar) who confirmed so much of the Assistant Commissioner's decree as declared that both the parties were hakdars to the office and set aside that portion of it which directed the enjoyment of the office by turns. The Appellate Court decree was thus a declaratory decree, pure and simple. It did not give the plaintiff any relief. At the instance nevertheless of the plaintiff's alleged son, the Deputy Commissioner Mr. Sparkes dispossessed the defendant and gave possession of the office to the applicant (respondent). The legitimacy or otherwise of the applicant has not been determined, but has been reserved for adjudication in a regular suit. Government are clearly of opinion that the decree of the Appellate Court has been misconstrued and that there is nothing in it to justify possession (and that too an exclusive one) being given to the plaintiff's successor in title. On this ground Government hold that the Deputy Commissioner's proceedings in execution cannot be upheld. It is unnecessary for the purpose of this appeal to go into the question of the respondent's legitimacy or otherwise. Government hold that the appellant (defendant) ought not to have been ejected in the manner he has been. The appeal is allowed and the Deputy Commissioner's order is set aside.

No. 1391—P. F. 169-03, dated Bangalore, 4th May 1904.

Copy of the above is forwarded to the Deputy Commissioner, Bangalore District, together with the records received with his letter No. 404, dated 5th November 1903.

L. ANANTASAMI RAO,
Offg. Secy. to Govt., Gen. & Rev. Depts.